

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Maine

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS
FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

ATTACHMENT 4-34-A

Provision in Maine's Probate Code allows any competent person age 18 or older to give directions concerning the health care he or she is to receive by executing a durable power of attorney for health care or a living will. 18A M.R.S.A. Sections 5-501, 5-502, 5-701-5-714. The law defines the durable power of attorney as follows:

If a principal designates another as his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words: "This power of attorney shall not be affected by disability of the principal;" "This power of attorney shall become effective upon the disability of the principal;" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability."

The authority of the attorney-in-fact or agent to act on behalf of the principal shall be set forth in the power and may relate to any act, power, duty, right or obligation which the principal has or may acquire relating to the principal or any matter, transaction or property, real or personal, tangible or intangible, including, but not limited to, the power to consent to, withhold consent to or approve on behalf of the principal any medical or other professional care, counsel, treatment or service of or to the principal by a licensed or certified professional person or institution engaged in the practice of, or providing, a healing art.

18-A M.R.S.A. Section 5-501

A durable power of attorney must be notarized. ID.

The law defines a living will declaration as follows:

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An individual of sound mind and 18 or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of sound mind and 18 or more years of age to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by 2 individuals.

18-A M.R.S.A. Sections 5-701(b)(1), 5-702(a)

A living will may be in one of two forms: 1) a simple set of directions to the doctor, Section 5-702(b); or 2) designation of another person to make decisions concerning life-sustaining treatment, Section 5-702(c).

The standard living will sets forth in the statute provider for the withholding or withdrawal of life-sustaining treatment from a person in a terminal condition or a persistent vegetative state, Section 5-702(b), (c).

"Life-sustaining treatment" is defined as including artificially administered nutrition and hydration, Section 5-702(b)(c). A person signing a living will who wants to have nutrition and hydration continued at the same time that other forms of life-sustaining treatment are discontinued must say so explicitly in the living will. Section 5-702(b), (c).

Both the durable power of attorney for health care and the living will may be revoked. 18-A M.R.S.A. Sections 5-501, 5-704. The living will may be revoked in any manner without regard to the declarant's mental or physical condition. Section 5-704.

An attending physician or other health care provider who is unwilling to comply with directions in a living will shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so. 18-A M.R.S.A. Section 5-708. Physicians and health care providers who willfully fail to record a living will or transfer a patient are subject to criminal penalties, as are individuals who conceal, cancel, deface, obliterate, falsify or forge a living will. Section 5-710. On the other hand, physicians, health care providers and other individuals who attempt in good faith to comply with a living will and with the statute are immune from civil and criminal liability and from discipline for unprofessional conduct. Section 5-709.

When an individual is in a terminal condition or persistent vegetative state and has not executed a living will or durable power of attorney for health care, the law allows the individual's guardian or relatives, listed in order of priority based on the closeness of kinship, to make a decision concerning the withholding or withdrawal of life-sustaining treatment. 18-A M.R.S.A. Section 5-707. An individual, while still competent, may prevent any relatives from making such decisions by disqualifying them in writing from doing so. Section 5-707(g).

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HEALTH CARE:
YOUR RIGHT TO CHOOSE



You have the right to make choices about your own health care -- whether at home or in a hospital, nursing home, or other health care facility. A new federal law requires that you be told about your rights. This information should help you understand them.



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4. You may have strong feelings about how you want to be cared for when you are sick and cannot express your own wishes. You should discuss your feelings with the person you are naming as your "agent" and with other family members as well. You may also write your wishes down in your Durable Power of Attorney, so that your agent, your family, and your doctor will all be on notice as to how you feel. If you want to do this, there are spaces provided for this purpose at the bottom of page 1 of the form. But it is not required that you complete this section of the form: you may leave it blank if you want to.
5. Before you actually sign the Durable Power of Attorney, you must find a notary public or an attorney to witness your signing of the form.
6. It is also wise (although not absolutely necessary) to have two other adults (age 18 or over) witness your signature. This will make it more likely that your power of attorney will be respected if you are hospitalized in another state. It is better if the witnesses are not relatives of yours or people who will inherit money or property from you.
7. After you have gathered these people together, sign the form where it tells you to, write in today's date, and fill in your social security number or date of birth.

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NOTE: If you are unable to write or it is hard for you to do so, you may have another person sign your name for you. This should be someone other than the two witnesses and the notary or attorney. This person should sign your name. Then, underneath or next to your signature, the person should write: "Signed by (the person's name) at the direction of (your name)."

8. Have the notary or attorney sign his or her name and complete the information required on the back of the form.
9. If you are having your signature witnessed by two other people, in addition to the notary or attorney, have them sign their names and addresses in the spaces provided.
10. You must give the original or a copy of the Durable Power of Attorney to the following people:
 - * The person or persons you named as your "agent" to make health care decisions for you.
 - * Your primary doctor.
 - * The health care facility at which you are being treated.

Write in the names of these people at the bottom of page 2 of the form.

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11. It is also a good idea to make copies of the Durable Power of Attorney. Of course, you should keep a copy for yourself. You should also give copies to the following people:

- * Other doctors whom you see.
- * Family and friends.

12. Fill out the card in the back of this packet and carry it with you.

13. It is perfectly all right for you to change your mind about what you have said in your Durable Power of Attorney. If you do decide to revoke (cancel or take back) your Durable Power of Attorney, the first thing you should do is tell your doctor, who will write down in the medical record that you have changed your mind. It is also a good idea to ~~prepare~~ prepare a statement, either typed or in your own writing, that you have changed your mind. If you can, you should have this statement witnessed by a notary or attorney, just as you did with the Durable Power of Attorney. You should make copies of this statement and give one to each person who got a copy of the Durable Power of Attorney.

Extra copies of the Durable Power of Attorney for Health Care are available from the Bureau of Elder and Adult Services, 624-5335, and the Maine Committee on Aging, 289-3658.

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HOW TO PREPARE A LIVING WILL

1. Fill in your name and address at the top of the Living Will in the spaces provided, or else have someone else do this for you.
2. Find two adults (age 18 or older) to be witnesses while you sign the Living Will. It is better if the witnesses are not relatives of yours or people who will inherit money or property from you.
3. It is also wise (although not required by law) to have a notary public or attorney at law on hand to witness your signature. This will make it more likely that your Living Will will be respected in another state.
4. After you ~~have~~ gathered these people together, sign the form where it tells you to, write in today's date, and fill in your social security number or date of birth.

NOTE: If you are unable to write or it is hard for you to do so, you can have another person sign your name for you. This should be someone other than the two witnesses and the notary or attorney. This person should sign your name. Then, underneath or next to your signature, the person should write: "Signed by (the person's name) at the direction of (your name)."

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Read the paragraph which says "Optional." This paragraph asks you to make a decision about artificial nutrition and hydration. This means the feeding of a patient through a tube inserted into the nose and throat, into the stomach, into the veins, or in a similar way. A patient may be tube-fed if she is too ill to swallow or take food by spoon. Very often people who are dying will at some point stop eating.

Different people have different feelings about artificial nutrition and hydration. Some people feel that tube-feeding is just like other forms of medical treatment. These people feel that if they are ever in a hopeless condition they do not want to be tube-fed, because it will only prolong the dying process and not make them any more comfortable. However, other people feel differently. They feel that food and water, even when given to a patient through a tube, is different from other kinds of medical care. These people want to continue to receive artificial feeding and hydration, even if they are in a hopeless condition, and even if other forms of medical care are stopped.

Only you can make the decision, which is: Do you want to be given nutrients(food) and fluids(water) through a tube if you are ever in a terminal condition or persistent vegetative state?

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If you do want to receive artificial nutrition and hydration, then you must sign your name a second time in the space provided under the "Optional" paragraph.

If you do not want to receive artificial nutrition and hydration, then you do not sign your name a second time in the space provided in the "Optional" paragraph.

6. Have your witnesses sign their names and addresses in the spaces provided.
7. If you are having a notary or attorney witness your signature, have him or her complete that part of the form.
8. You must give the original or a copy of the Living Will to your primary doctor or to the health care facility where you are being treated. Write in the names of these people at the end of the form.
9. It is also a good idea to make copies of the Living Will. Of course, you should keep a copy for yourself. You should also give copies to the following people:
 - * Other doctors whom you see.
 - * Family and friends.
10. Fill out the Wallet Card in back of the forms in this packet and carry it with you.

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11. It is perfectly all right for you to change your mind about what you have said in your Living Will. If you do decide to revoke (cancel or take back) your Living Will, the first thing you should do is tell your doctor, who will write down in your medical record that you have changed your mind. It is also a good idea to prepare a statement, either typed or in your own writing, that you have changed your mind. If you can, you should have this statement signed by two witnesses, just as you did with the Living Will. You should make copies of this statement and give one to each person who got a copy of the Living Will.

What happens to the Living Will after I have signed it and ~~given~~ it to my doctor?

Your doctor will put the Living Will in your medical record, where it should be seen by everyone involved in your care. Later on, if you are dying or in a persistent vegetative state, the doctor caring for you will follow the directions in your Living Will. If the doctor is not willing to follow your directions because of the doctor's own personal or religious beliefs, he or she must transfer you to the care of another doctor who will follow your directions.

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